

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6675**

**BILL NUMBER:** HB 1081

**NOTE PREPARED:** Mar 20, 2013

**BILL AMENDED:** Mar 19, 2013

**SUBJECT:** Financial Institutions and Consumer Credit.

**FIRST AUTHOR:** Rep. Burton

**FIRST SPONSOR:** Sen. Holdman

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill makes various changes to the laws concerning: (1) financial institutions; (2) first lien mortgage lenders; (3) persons regulated under the Uniform Consumer Credit Code, including payday lenders; (4) debt management companies; (5) pawnbrokers; (6) money transmitters; (7) rental purchase agreements; and (8) funeral trusts.

The bill prohibits sellers from imposing surcharges on customers that elect to use credit cards as means of payment for certain sales or lease transactions. It provides that credit card issuers may not prohibit sellers from offering discounts for payments by cash, check, or similar means on certain sale or lease transactions. Provides that a person who violates the provisions concerning credit card surcharges and cash discounts commits a deceptive act under the deceptive consumer sales provisions.

The bill repeals provisions that do the following: (1) Allow a debtor to cancel an agreement with a debt management company before midnight of the third business day after the debtor enters into the agreement. (2) Concern the definition, cancellation, and duration of, and alternatives to, a "surety device" for purposes of the statute concerning money transmitters. (3) Concern the application fee for purposes of the statute concerning money transmitters.

**Effective Date:** January 1, 2013 (retroactive); July 1, 2013; November 1, 2013; January 1, 2014; July 1, 2014.

**Explanation of State Expenditures:** *Various Financial Institutions Matters:* For purpose of the statute related to First Lien Mortgage Lending and Uniform Consumer Credit Code, the bill updates the reference to federal law as in effect on December 31, 2012, instead of December 31, 2011.

For purpose of the statute related to First Lien Mortgage Lending and Uniform Consumer Credit Code, it changes the definition of 'Consumer Credit Sale' as it relates to the sale of goods or services, to a sale where the amount does not

exceed \$53,000 or when the debt is secured by personal property used or expected to be used as principal dwelling of the buyer (current law limits it to \$50,000 or when the debt is secured by personal property used or expected to be used as principal dwelling of the buyer). It also makes the same threshold changes to the definition of 'Consumer Loan', 'Consumer Lease', 'Consumer Related Sale', and 'Consumer Related Loan' within the Uniform Consumer Credit Code.

For purpose of the statute related to First Lien Mortgage Lending and Uniform Consumer Credit Code, the bill makes changes to surety bond requirements for creditors and entities exempt from licensing that employs a licensed mortgage loan originator.

The bill prohibits an unlicensed individual or an unlicensed organization to act as a closing agent in a first lien mortgage transaction. It provides that the Department of Financial Institutions (DFI) may investigate any licensee or person that the DFI suspects to be operating without a license or in violation of the First Lien Mortgage Lending Act. It provides the DFI with the investigative powers and requires that the person being investigated pay all reasonable costs for the investigation.

The bill provides that sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction at a creditor's place of business in another state.

Under current law a lessor is required to file a notification with the DFI within 30 days after soliciting or entering into a rental purchase agreement and before February 1 in each subsequent year. This bill provides further guidelines and requirements on the content of the notification.

The bill provides further guidelines for filing an article of dissolution of a bank, trust company, or a building and loan association. It also makes changes to the certain powers of banks and trust companies.

The bill removes 'persons under supervision and control of an attorney at law authorized to practice in Indiana' from the definition of debt management companies. It defines the term 'Indiana Contract Debtor' and 'Lead Generator' and modifies the definition of 'Trust Accounts'. It stipulates further requirements to operate a debt management company in Indiana. It requires a surety bond and provides guidelines related to the surety bond. It provides that a licensee shall notify the director of DFI in writing of any enforcement action initiated against the licensee by a federal or state regulatory agency. It makes changes to the conditions under which a licensee may not provide debt management services. It provides that a lead generator or another person that (1) provides services to or for a licensee; and (2) commits a violation of laws regarding debt management companies; commits a deceptive act that is punishable by up to \$1,000 per customer.

The bill stipulates further requirements to operate a pawnbroking company in Indiana. It requires that a pawnbroker must be covered by a surety bond and provides guidelines related to the surety bond. It provides that a pawnbroking transaction occurs in Indiana and is subject to Indiana licensing and other laws if it meets certain requirements. It specifies those requirements.

The bill provides further guidelines for licensing for money transmitters. It provides that the director of DFI may designate the 'Nationwide Mortgage Licensing System and Registry' (NMLSR) to serve as the sole entity responsible for processing licenses and performing other services as they relate to money transmitting organizations. It requires a surety bond from a money transmitter and provides guidelines for fulfilling that requirement. It provides that an annual license will expire on December 31 and it must be renewed no later than December 31 of each year.

It makes other changes related to various financial institutions.

**Explanation of State Revenues:** *Deceptive Consumer Sales:* The bill provides that a person that violates the provisions in the bill related to the 'Credit Card Surcharges by Sellers' commits a violation of the Deceptive Consumer Sales Act. The penalties for violation of the Deceptive Consumer Sales Act includes damages actually suffered and attorney fees incurred by an individual or class bringing suit. Additionally, the Attorney General (AG) may bring an action to enjoin a deceptive act or collect a civil fine of up to \$500. The increase in revenue will ultimately depend upon the number of successful actions by the AG. The revenue from these civil penalties is deposited in the state General Fund.

*Court Fee Revenue:* The various provisions in the bill could lead to additional civil actions. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment Fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

#### **Explanation of Local Expenditures:**

**Explanation of Local Revenues:** If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

**State Agencies Affected:** Department of Financial Institutions, Attorney General.

**Local Agencies Affected:**

**Information Sources:**

**Fiscal Analyst:** Randhir Jha, 317-232-9556.